

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CARY BRINKLEY,

Plaintiff,

v.

MARK BARNHART,

Defendant.

Case No. 2:22-cv-00219

ORDER RE: SETTLEMENT
CONFERENCE WITH UNITED
STATES MAGISTRATE JUDGE

This matter comes before the Court on the parties' joint request for settlement conference and United States District Judge Kymberly Evanson's order granting the parties' request, referring this case to the undersigned for settlement purposes. Dkt. 66.

Accordingly, the Court orders as follows:

The parties are directed to appear for a Settlement Conference to be held via Zoom Conference before the United States District Court for the Western District of Washington at Tacoma. The Conference will start at 10:00 AM on September 23, 2024, and will conclude no later than 2:30 PM. If the parties do not reach a settlement and request more time for negotiating, the Conference will continue at 10:00 AM on September 24, 2024, and will conclude no later than 3:00 PM.

1 **The Court will provide the parties with instructions to access the Zoom**
2 **Conference separately from this Order. The required settlement memoranda,**
3 **more fully described below, are due no later than 9:00 AM on September 23, 2024.**

4 Persons with ultimate settlement authority must be personally present at the
5 settlement conference or readily available by phone.

6 Participation of parties at the settlement conference – in person – is likely to
7 increase the efficiency and effectiveness of the settlement conference. **All parties shall**
8 **participate in the Zoom Conference with counsel.** A request to be exempt from this
9 requirement should be submitted to the Court in writing no later than 3:00 PM on
10 September 20, 2024. Please address any request to Payal Patel-Marte, Judicial Law
11 Clerk to Magistrate Judge Fricke, at payal_patel@wawd.uscourts.gov. The email
12 subject line should include your case number and “Request for non-appearance of a
13 party.”

14 Parties not appearing on videoconference shall be available by phone and email
15 (including the ability to review documents and sign) for the duration of the settlement
16 conference.

17 Any counsel appearing without authority to negotiate, or without the ability to
18 readily contact the person with full and ultimate settlement authority throughout the
19 settlement conference, may be sanctioned.

20 Other people who may increase the probability of settling the case should be
21 present, if possible. For example, the attendance of an expert, or a representative from
22 the insurer if insurance affects the settlement, may be helpful. Counsel assisting the
23 client on related matters may need to be involved. At the very least, contact information
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1 should be available for individual persons or representatives of entities who may
2 enhance the negotiations.

3 Plaintiff is encouraged to make a settlement demand on or before 5:00 PM on
4 Friday, September 20, 2024, and defendant is encouraged to respond to that demand
5 on or before 9:00 AM on Monday, September 23, 2024.

6 Each party shall provide, **in confidence**, a concise settlement memorandum **no**
7 **longer than ten double spaced pages and which should not include attachments**
8 **or exhibits unless under extraordinary circumstances**. Please do not file these
9 confidential memoranda with the Clerk's Office or serve the memoranda on opposing
10 counsel. Each party's confidential memoranda shall include a brief description of:

- 11 1. liability disputes;
- 12 2. facts you believe you can prove at trial;
- 13 3. the estimated monetary value, and how you calculate the estimated value, of
14 the amount of damages at issue in the case;
- 15 4. the major weaknesses in each side's case, both factual and legal;
- 16 5. the history of settlement negotiations thus far, including any settlement
17 demand(s) and response(s) to the demand;
- 18 6. the party's settlement position;
- 19 7. the major obstacle(s) to settlement as you perceive it;
- 20 8. special issues that may have a material bearing upon settlement discussions;
- 21 and
- 22 9. any person(s) (with a description of their position or role) you plan to bring to
23 the settlement conference.

1 In setting forth your settlement position, please do not limit your discussion to
2 arguments on the merits of your case. For the Court and the parties to be successful in
3 the limited time provided for this settlement conference, you should provide the Court
4 with a clear and candid understanding of your and your client's actual evaluation of the
5 interests, value, and monetary aspects that your client is most concerned about in any
6 potential settlement of this case and an idea of terms under which you believe the case
7 should settle.

8 The memorandum shall include the case number, and case name; each party
9 shall email their memorandum directly to Magistrate Judge Fricke, at:
10 payal_patel@wawd.uscourts.gov. The email subject line should read: "**Confidential –**
11 **Brinkley v. Barnhart, - September 23, 2024– [Defendant/Plaintiff's name]**
12 **Settlement Position Paper.**" Do not send electronic or hard copies of the settlement
13 memorandum to the opposing party or to the opposing party's attorney – this is for the
14 Court only.

15 Counsel for the parties may be contacted by the Court to answer questions,
16 clarify issues, and discuss other preliminary matters designed to ensure the conference
17 itself is productive. Counsel may contact the Court by sending an email to Judicial Law
18 Clerk Payal Patel-Marte at: payal_patel@wawd.uscourts.gov if counsel would like to
19 request an appointment with Magistrate Judge Fricke to address any matter they
20 believe needs to be discussed in advance, including any request to use exhibits,
21 technology-assisted presentations, or conduct lengthy opening statements.

1 It is the duty of the parties to notify the Court if trial is continued or if the case is
2 settled or otherwise concluded prior to the date of the scheduled settlement conference,
3 so that the matter may be removed from the Court's docket.

4 In the period immediately preceding the settlement conference, if either party
5 believes that negotiation attempts would not be fruitful at the time set for the conference
6 for any reason, that party should contact the Court as soon as possible to discuss the
7 concern. Counsel for the parties are strongly encouraged to engage in preliminary
8 discussions with an eye toward meaningfully narrowing their disputes before appearing
9 for the Conference.

10 The Court expects that each participant will be well-prepared, open-minded, and
11 sincerely interested in achieving settlement. To encourage open communication, the
12 Court orders that all matters communicated in connection with this judicial settlement
13 are confidential and not to be used for any other purpose.

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15 Dated this 19th day of September, 2024.

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Theresa L. Fricke
19 United States Magistrate Judge
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